Exhibit 1:

ECF No. 60 in

CFPB v. Gasparyan

BARRY REIFERSON (*pro hac vice*)
Email: barry.reiferson@cfpb.gov
MEGHAN SHERMAN CATER (*pro hac vice*)
Email: meghan.sherman@cfpb.gov
JADE A. BURNS (*pro hac vice*)
Email: jade.burns@cfpb.gov
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Telephone: (212) 328-7020
Facsimile: (202) 435-7329
KENT A. KAWAKAMI, CA Bar #149803
Email: kent.kawakami@usdoj.gov
Local Counsel
United States Attorney's Office
Central District of California – Civil Division
300 North Los Angeles Street, Room 7516
Los Angeles, CA 90012
Telephone: (213) 894-4858
Facsimile: (213) 894-2380
Attorneys for Plaintiff
Consumer Financial Protection Bureau

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Consumer Financial Protection Bureau, Plaintiff, v. Davit Gasparyan, Defendant.	Case No. 2:16-cv-2725-PSG(Ex) Honorable Philip S. Gutierrez PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR CONSOLIDATION Hearing Date & Time: April 17, 2017; 1:30 p.m. Courtroom 6A, 350 West 1st Street, 6th Floor, Los Angeles, California 90012

INTRODUCTION

The Consumer Financial Protection Bureau agrees in principle to consolidation of the three related cases[1] and relayed this view to defendant Gasparyan during pre-motion discussions. During a call with Gasparyan before this motion, the Bureau informed Gasparyan that it "absolutely" agrees that consolidation is appropriate and suggested that the parties make a joint filing after thorough discussions about the impact of any consolidation on the Court's schedule and other procedural issues. Gasparyan refused to continue discussions as required under Local Rule 7-3 and the Court's Standing Order,[2] and did not accurately describe the Bureau's position in his motion, thereby necessitating this response.[3]

DISCUSSION

I. The Related Cases Should Be Consolidated For All Purposes.

The related cases should be consolidated for all purposes instead of just for pretrial purposes, and Gasparyan offers no support for anything less than full consolidation.

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[1] *CFPB v. Davit Gasparyan*, 2:16-cv-2725-PSG(Ex); *CFPB v. D and D Marketing, Inc., et al.*, 2:15-cv-9692-PSG(Ex); and *CFPB v. Dmitry Fomichev*, 2:16-cv-2724-PSG(Ex).

[2] Standing Order Regarding Newly Assigned Cases, ECF No. 9, at ¶¶ 5(b), 12 (requiring counsel to "discuss the issues to a sufficient degree that if a motion is still necessary, the briefing may be directed to those substantive issues requiring resolution by the Court;" to "resolve minor procedural or other non-substantive matters;" and that counsel requesting a continuance lodge a proposed stipulation).

[3] The "conference of counsel" to which Gasparyan refers on page 1 of his Notice of Motion was an unplanned, perfunctory call during which Gasparyan first stated he was going to move for consolidation and the Bureau first responded that it likely would agree to consolidation but that further consideration was warranted. The parties spoke again on February 9, 2017, and during that telephone call Gasparyan relayed his belief that he had fulfilled his obligations to confer in advance of filing his motion.

"The Court has broad discretion to order consolidation,"[4] and Federal Rule of Civil Procedure 42(a) provides for full or limited forms of consolidation.[5] Consolidation under Rule 42(a) is intended to "enhance trial court efficiency by avoiding unnecessary duplication of proceedings and effort," and to avoid "the risk of inconsistent adjudications."[6] Gasparyan admits, as he must, that consolidation avoids the "unnecessary duplication of evidence and procedures … [and] guards against the risk of inconsistent adjudications."[7] Inexplicably, however, Gasparyan opposes consolidation for the trial for which evidence and procedures would be duplicated and from which the risk of inconsistent adjudications emanates. Unsurprisingly, every case Gasparyan cites in support of his motion for *limited* consolidation for the sake of judicial efficiency resulted in *full* consolidation.[8] Full consolidation is similarly warranted here.[9]

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[4] *Investors Research Co. v. U.S. Dist. Court for Central Dist. of Cal.*, 877 F.2d 777 (9th Cir. 1989).

[5] *See Window World of Chicagoland, LLC v. Window World, Inc.*, 811 F.3d 900, 903 (7th Cir. 2016) (Rule 42(a)(2) "provides for full consolidation, while subsections (a)(1) and (a)(3) authorize other forms of consolidation.").

[6] *AMTRAK v. Camargo Trucking*, Case No. 1:12-cv-775 AWI-BAM, 2013 U.S. Dist. LEXIS 3143, at *6-9 (E.D. Cal. Jan. 7, 2013) (citation omitted).

[7] Mot. at 6 (internal quotation marks and citations omitted).

[8] *See id.*, citing *EEOC v. HBE Corp.*, 135 F.3d 543, 550-51 (8th Cir. 1998) (finding it "appropriate to avoid the inefficiency of separate trials involving related parties, witnesses, and evidence"); *Sylverne v. Data Search N.Y., Inc.*, 2008 U.S. Dist. LEXIS 88303, at *3-8 (N.D. Ill. May 28, 2008) (The "specter" of multiple trials "involving identical legal claims and substantially overlapping evidence" would waste resources "for claims that could be adjudicated in one trial," and consolidation would avoid the possibility of inconsistent verdicts.); *Cadillac Ins. Co. v. American Nat'l Bank*, 1992 U.S. Dist. LEXIS 2815, at *25-27 (N.D. Ill. Mar. 10, 1992) (consolidating cases for trial, in part to "avoid a situation where there might be conflicting results from separate actions").

[9] *See, e.g.*, *Anderson v. Office Depot, Inc.*, 2011 U.S. Dist. LEXIS 114180, at *1-3 (S.D. Cal. Oct. 4, 2011) (cases consolidated for all purposes, to "preserve judicial and party resources and … prevent potential conflicting results and adjudications).

Full consolidation is particularly appropriate where related cases are in the relatively early procedural stages and involve a common nucleus of operative facts.[10] There is no question that these related cases involve a common nucleus of operative facts,[11] and each is in the pre-discovery stage.

II. Consolidation will necessarily impact the Court's schedule.

Gasparyan uses his consolidation motion to also seek a continuance of the scheduling conferences in each of the related cases, albeit without submitting the stipulation required by the Standing Order.[12] In fact, it appears that this motion may be intended to delay the commencement of discovery.

It was the Bureau that first sought agreement from all parties in the related cases to consolidate the cases in October 2016. Then, on November 21, 2016, the Bureau asked all parties in the related cases to make themselves available to discuss and again attempt to reach agreement on consolidation. No other party—including Gasparyan—agreed to discuss consolidation at length, and T3, the Demirchyans, and Fomichev stated simply that consolidation then was "premature." Now, Gasparyan has had a change of heart on consolidation and has indicated, both during discussions and in his motion, that he will take advantage of any delay in his scheduling conference to withdraw from the joint Rule 26(f) discovery-planning conference scheduled for February 27, 2017.[13]

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[10] *See, e.g.*, *AMTRAK v. Camargo Trucking*, Case No. 1:12-cv-775 AWI-BAM, 2013 U.S. Dist. LEXIS 3143 at *9.

[11] *See* Consolidated Order Denying Defendants' Motions to Dismiss, ECF No. 39, and the Court's recent joinder of the T3 and Fomichev motions for certification of interlocutory appeal for hearing, ECF No. 70, *CFPB v. D and D Marketing, Inc. et al.*, Case No. 2:15-cv-09692-PSG(EX).

[12] *See* Mot. at 7.

[13] *Id*. (seeking later Rule 26(f) conference).

For the sake of efficiency, and given the common nucleus of operative facts, a single scheduling conference for the three related cases would be appropriate. But Gasparyan's attempt to use consolidation of scheduling conferences to delay the commencement of discovery should be rejected.

Under the current schedule, the parties may begin discovery after the February 27, 2017 Rule 26(f) conference. Denying Gasparyan's request and instead adding his scheduling conference to the March 20, 2017 scheduling conference in the related cases would best move these cases forward. If the Court instead moves the March 20, 2017 scheduling conference to a later date, the Bureau requests that the Court order the parties in the related cases to hold their joint Rule 26(f) conference as scheduled on February 27, 2017.

There are also two hearing dates for three separate motions for certification of interlocutory appeal for the three related cases: *CFPB v. D and D Marketing, et al.* and *CFPB v. Fomichev* are scheduled for hearing(s) on March 27, 2017, and the Gasparyan motion, not yet filed,[14] will presumably be scheduled for a hearing in late April. The Bureau believes that a single hearing on all three motions would be appropriate. The Bureau takes no position as to which date should be chosen except it requests that, if the Court desires oral argument on the motions for certification of interlocutory appeal, the hearing be scheduled for before March 21, 2017, or after April 2, 2017, because lead counsel for the Bureau is unavailable during the interim period.

CONCLUSION

For the foregoing reasons, the Bureau consents to consolidation of the three related cases and requests (i) consolidation for all purposes; (iii) that a consolidated scheduling conference be held on March 20, 2017; and (iii) that a consolidated

[14] Mot. at 2, n.3.

hearing on motions for certification of interlocutory appeal be scheduled for a date before March 21, 2017, or after April 2, 2017.

Dated: February 17, 2017

CONSUMER FINANCIAL PROTECTION BUREAU
By /s/ Barry E. Reiferson
Barry E. Reiferson
Attorney for Plaintiff,
Consumer Financial Protection Bureau